

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ROBINSON,

Plaintiff,

v.

R&M RASHIDY INVESTMENT, INC.,

Defendant.

No. 2:23-cv-914-MCE-KJN

ORDER

(ECF No. 13.)

On Friday, September 15, 2023, defendant filed an ex parte motion for Rule 34 discovery restraining order, docketing this motion as a motion for temporary restraining order. According to defendant's submission and associated documents, it appears plaintiff intends to conduct a Rule 34 inspection of defendant's business on Tuesday, September 19th as related to plaintiff's ADA claims. (ECF No. 13.) Currently pending on the docket is defendant's motion for a protective order regarding this inspection, as the parties dispute the scope of the area subject to inspection. This matter is set for a hearing on October 10, 2023. (See ECF No. 8.)

First, the court is not convinced that TROs apply to discovery matters. See, e.g., United States v. INSYS Therapeutics, Inc., 2021 WL 6882168, at *1 (C.D. Cal. Oct. 25, 2021) ("The Court questions whether a stay of discovery really falls within the parameters of a TRO. Nonetheless, like an application for a TRO, the court will not stay discovery absent a strong showing that irreparable harm would ensue."). However, parties may request the court stay

1 discovery in certain circumstances and may do so on an expedited basis—ex parte with the proper
2 showing. See Local Rule 144(e). Here, it appears defense counsel attempted to confer with
3 plaintiff about this matter and was rebuffed. Given that the scope of the inspection is at issue in
4 defendant's protective order, allowing plaintiff to fully inspect defendant's establishment before
5 the October hearing would essentially render moot defendant's motion for a protective order.
6 Thus, defendant meets the requirements to satisfy Local Rule 144(e) to shorten time on an ex
7 parte basis.

8 As to whether the inspection should or should not be stayed, defendant should not need to
9 make such a request because, by operation of the court's local rules, the inspection is already
10 stayed. Local Rule 251(g) states:

11 When a party files a motion for a protective order in response to
12 any discovery request, **that party's obligation to respond to the**
discovery request is stayed pending resolution of the motion for
13 **a protective order.**

14 (emphasis added). Thus, until the court resolves defendant's protective order motion on October
15 10, 2023, plaintiff's inspection may not take place.¹ Plaintiff is reminded of his obligations to
16 follow the court's rules and is cautioned that any violation can result in sanctions. See E.D. Cal.
17 Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with any order of
18 the Court may be grounds for imposition by the Court of any and all sanctions authorized by
19 statute or Rule or within the inherent power of the Court."); Ghazali v. Moran, 46 F.3d 52, 53 (9th
20 Cir. 1995) (per curiam) (affirming that a failure to follow a district court's local rules is a proper
21 ground for sanctions).

22 **ORDER**

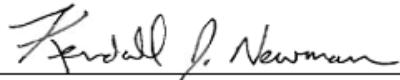
23 1. Defendant's ex parte motion to shorten time (ECF No. 13) is GRANTED;
24 2. The inspection of defendant's premises is stayed until after the October 10, 2023 hearing,

25 ¹ Given that the parties have a hearing on defendant's protective order motion set for October
26 10th, the court refrains from commenting on the substance of the parties' arguments at this time.
27 However, should plaintiff agree to defendant's demands regarding the limited scope of
28 inspection, the parties can certainly confer, have the October 10th motion withdrawn, and proceed
with the inspection at their mutual discretion. Absent this, the stay of the inspection shall remain
in force until the court resolves defendant's protective-order motion.

1 as per Local Rule 251(g); and

2 3. Plaintiff is reminded of his obligations to follow the court's local rules and is warned that
3 a failure to do so can result in sanctions.

4 Dated: September 18, 2023

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6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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